IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 54 OF 1991
WITH
CROSS OBJECTION ST.NO. 29095 OF 1992

The State of Maharashtra. ... Appellant.

Versus.

1. Valakya Sitaram Surate.
2. Atmaram Sitaram Surate.
3. Madhukar Baliram Surate.
4. Madhurabai Sawalaram Surate. ... Respondents.

Shri S.N.Gawade, A.G.P. for the Appellant.

Shri Sachin Punde and Shri Rajiv L.Patil for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 9th January, 2007.

ORAL JUDGMENT.

1. Heard the learned A.G.P. for the Appellant and the learned Advocate appearing for the Respondents. The Appellant-State of Maharashtra has taken exception to the Judgment and Award dated 22nd February 1989 passed by the learned Civil Judge, Senior Division, Raigad at Alibag in Land Acquisition Reference No.215 of 1987. By the said Judgment and Award, a Reference under section 18 of the Land Acquisition Act, 1894 (hereinaftrer referred to as the said Act of 1894) filed at the

instance of the Respondents has been partly allowed. The acquisition is in respect of land bearing Survey No.346, Hissa No.6, admeasuring 2800 sq.meters situated at village Kamothe, Taluka Panvel, Dist. Raigad. The land was notified under section 4 of the said Act of 1894 by a Notification dated 3rd February 1970. The land was notified for the public purpose of development of satellite city of Navi Mumbai. The Award under section 11 of the said Act of 1894 was made on 10th September 1986. The Special Land Acquisition Officer fixed the market value at the rate of Re.1/- per sq.meter. By the impugned Judgment and award, the learned trial Judge has fixed the market value at the rate of Rs.12/- per sq.meter. The Respondents have filed cross-objection claiming market value at the enhanced rate of Rs.20/- per sq.meter.

2. The learned A.G.P. appearing for the Appellant-State submitted that the Reference Application made by the Respondents was barred by limitation. He pointed out that the Reference Application discloses that the Respondents received compensation amount on 23rd September 1986 and the Reference Application was filed on 18th November 1986. He submitted that 23rd September 1986 will have to be taken as the date on which the notice under section 12(2) of the said Act of

1894 was served to the Respondents. He pointed out that the Reference Application filed on 18th November 1986 was beyond the period of stipulated limitation of six weeks. He, therefore, submitted that the Reference ought to have been dismissed.

3. The learned Advocate appearing for the Respondents contended that the Appellant had not led any evidence to show that the notice under section 12(2) of the said Act of 1894 was served to the Respondents on a particular date. He submitted that therefore, the period of limitation shall be six months from the date of the Award.

4. The learned Advocate for the Respondents relied upon a decision of the Division Bench of this Court in the case of Nama Padu Hudar and others v/s.State of Maharashtra in First Appeal No.754 of 1986 and other connected matters. He submitted that in view of the said decision, the Respondent swill be entitled to the market value of Rs.20/- per sq.meter.

5. I have considered the submissions. I have perused the record of the trial Court. Under proviso (a) to sub-section (2) of section 18 of the said Act of 1894, an application under section 18(1) is required to

be made within a period of six weeks from the date of the Collector's Award if the person making the application was present or represented before the Collector at the time when the Award was made. In other cases, the Application is required to be made within six weeks from the date of receipt of notice under section 12(2) of the said Act of 1894 or within six months from the date of the Collector's Award whichever period shall first expire. Thus in a case where the Claimant is not present or not represented at the time of making an award and where the Claimant has not received a notice under sub-section (2) of section 12, the Application will have to be filed within a period of six months from the date of the Award in view of the proviso (b) to sub-section (2) of section 18.

6. A perusal of the record shows that the Appellant has led no evidence to show that the notice under section 12(2) was served to the Respondents. Reliance is placed by the learned A.G.P on a letter dated 13th February 1987 sent by the Special Land Acquisition Officer to the learned District Judge,Raigad along with which the Reference Application made by the Respondent was forwarded to the Court. In the said letter it is stated that the notice under section 12(2) was received by the persons interested on 19th September 1986. A

copy of the notice dated 16th September 1986 under section 12(2) is also forwarded along with the Reference. However, no document is produced to show that the notice was in fact received by the Respondents.

7. A perusal of the evidence of the 3rd Respondent, who was examined on behalf of the Respondents, shows that even a suggestion was not given to him in the cross-examination that the notice under section 12(2) of the said Act of 1894 was served to him. Even in the written statement filed to the Reference, the Appellant has not set out that the notice under section 12(2) was served to the Respondent and that it was served on 19th September 1986. In fact the plea of bar of limitation is not at all taken in the written statement. In this case, it is not the case of the Appellant that the Respondents or their representative were present before the Special Land Acquisition Officer when the Award was made. No evidence is led to show that the notice under section 12(2) was served to the Respondents. Thus the period of limitation will be six months from the date of the Award. Admittedly the Application for Reference has been filed within the period of six months from the date of the Award. Hence there is no merit in the first submission made by the learned A.G.P.

8. In the case of Nama Padu Hudar (supra), a Division Bench of this Court by Judgment dated 25/26th February 1993 decided a group of First Appeals arising out of References under section 18 of the said Act of 1894. The said group of Appeals related to large tracks of lands situated at Panvel and village Kamothe, Taluka Panvel, District Raigad, which were notified for acquisition on 3rd February 1970 for the same public purpose of development of satellite city of Navi Mumbai. The Division Bench divided the lands which were the subject matter of the Appeals before it into five different categories depending upon the distance of the acquired land from Bombay-Pune Highway. The market value of the lands was fixed on the basis of its distance from the Highway. It is not in dispute that the decision of the Division Bench has attained finality. My attention has been invited to a decision of the Apex Court dated 6th March 2006 in Civil Appeal No.1557 of 2006 (Shantadevi Hariram Ruparel v/s. the Special Land Acquisition officer). In the said decision, the Apex Court has expressly approved the course adopted by the Division Bench of this Court in the case of Nama Padu Hudar of dividing the acquired land into five different categories for the purposes of fixing the market value. It is not in dispute that large tracks of land in villages Kamothe and Panvel were

acquired for the same project by a notification of the same date i.e. 3rd February 1970. Therefore, the decision in the case of Nama Padu Hudar is certainly relevant for deciding the market value in the present case. The Division Bench has fixed the market value of Rs.25/- per sq.meter to the land abutting the Highway. The market value of Rs.23/- per sq.meter has been fixed in respect of land which is located within a distance of 800 meters from the Highway. The market value of Rs.20/- per sq.meter has been fixed in case of land which is at a distance of 800 to 2200 meters from the Highway.

9. The Respondents have examined Shri Jeevan Narayan Kulkarni, a valuer. The report submitted by Shri Kulkarni has been exhibited as the same was proved in his evidence. The report discloses that the acquired land is at a distance of 2960 meters from the Highway. The Division Bench in the case of the land abutting Highway has fixed the market value of Rs.25/- per sq.meter and in case of land which is at a distance of 2200 has fixed the market value of Rs.20/- per sq.meter. Considering the formula adopted by the Division Bench and considering the distance of the acquired land from the Highway, the market value at the rate of Rs.17/- per sq.meter will have to be fixed in this case. Thus the

Cross Objection will have to be partly allowed to that extent. As the Award under section 11 has been made on 10th September 1986, there cannot be any dispute about the statutory benefits granted by the trial Court.

9. Hence the following order is passed:

(i) First Appeal No.54 of 1991 is dismissed. The Appellant will pay costs of the Appeal to the Respondents.

(ii) Cross Objection St.No.29095 of 1992 is partly allowed and the impugned Judgment and Award is modified.

(iii) It is held that the Respondents are entitled to market value at the rate of Rs.17/- per sq.meter. In addition to the said market value, the Respondents will be entitled to interest under section 23(1-A), solatium under section 23(2) and interest under section 28 of the Land Acquisition Act, 1894.

(iv) The Respondents will be entitled to the proportionate costs of the Reference as

well as the Cross Objection.

(v) The Reference Court will calculate the amount of compensation payable to the Respondents. This exercise shall be completed by the Reference Court within a period of four months from the date of receipt of the writ of this Judgment.

(vi) Writ to be sent immediately.

Judge.